IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

WILLIE RELLIFORD — PLAINTIFF

V. — CAUSE NO. 1:93CV113-B-A

HOLLY SPRINGS, MISSISSIPPI, ANTONY MARION, CHIEF OF POLICE, individually and in his official capacity, WESLEY CRUTCHER, individually and in his official capacity, WILLIAM HENLEY, individually and in his official capacity as an Alderman of the City of Holly Springs, Mississippi, and MAYOR EDDIE LEE SMITH, JR., individually and in his official capacity as Mayor of Holly Springs, Mississippi

DEFENDANTS

MEMORANDUM OPINION

This cause is presently before the court on the defendants' motions for summary judgment. Upon consideration of the motions, the plaintiff's response thereto, the affidavits and memoranda submitted by the parties, the court is prepared to rule.

The present cause results from the plaintiff's resignation and/or termination as a police officer with the City of Holly, Springs, Mississippi. The plaintiff alleges, in this 42 U.S.C. § 1983 action, that the named defendants deprived him of property and liberty interests in violation of the Fourteenth Amendment's Due Process Clause. Also included in this action, brought under this court's supplemental jurisdiction, are state law claims for breach

of contract, breach of implied covenant of good faith and fair dealing, and malicious interference with contract.[1]

FACTS

Officer Willie Relliford began his employment with the City of Holly Springs Police Department in October, 1989. He quickly rose through the ranks to the position of Investigator.

In the performance of his duties, he was called to the scene of an alleged gambling operation at a local carwash on December 3, 1992. With his son in his patrol car he drove out to the scene. Upon arrival, as the senior officer, Relliford took over the investigation from Officers Crutcher and Martin who were the first to arrive. Relliford informed the officers to arrest only those individuals who claimed money lying on the gambling tables. Three individuals were subsequently arrested.

Relliford also informed the owner of the establishment, Sane Deberry, that he would be arrested. As Relliford was preparing to leave, Deberry walked over to the patrol car and threw a $20 bill into it. Relliford stated that he immediately told Deberry he "was

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[1]The plaintiff had also alleged in his complaint a violation of the First Amendment. However, the pre-trial order did not contain this additional claim. The plaintiff indicated that he would move for leave of court to amend the pre-trial order to correct this alleged error. Fed. R. Civ. P. 16(e). The plaintiff has not done so. Even if the plaintiff were to have filed such a motion, it would be untimely and prejudicial to the defendants, causing unwarranted expense and delay in the adjudication of this cause. The alleged oversight was not discovered in over a year since the pre-trial order was filed, even after the court's own continuance of the trial date. See Angle v. Sky Chef, Inc., 535 F.2d 492 (9th Cir. 1976); Sherman v. United States, 462 F.2d 577 (5th Cir. 1972). Thus, the court will not consider this claim.

not with that." The defendants' version of this is slightly different. The defendants allege that Deberry gave the $20 to Relliford's son in the car for "cookie money." Relliford then received it from his son. In any event, the salient point is that Deberry apparently offered a bribe and that Relliford took possession of the $20 bill. Deberry was never arrested.

According to the plaintiff, he telephoned the Chief of Police, Anthony Marion, to inform him about Deberry and the $20 when he arrived at his residence. The next morning, Relliford went to Chief Marion's office and gave Marion the $20 bill.

The subsequent events are explained by the plaintiff as a product of the individual defendants' animosity and malice toward the plaintiff. For instance, the plaintiff alleges that defendant Henley displayed hostility toward him based on his familial relationship with Henley's political rival. In fact, the plaintiff alleges that Henley stated in a board meeting that he did not want to hire Relliford because of politics.

According to the plaintiff, Officer Crutcher also harbored ill feelings toward the plaintiff. Crutcher was allegedly attracted to Relliford's wife and was propositioning her to leave the plaintiff. Additionally, during this time Crutcher was spreading "poisonous feelings" about Relliford to other officers by telling them that they should look at the cars the plaintiff drove and the clothes he wore, apparently implying that the plaintiff was involved in some sort of illegal activity. Similarly, the plaintiff alleges improper relations by Chief Marion with his wife.

After hearing some of the rumors Crutcher was allegedly spreading, Relliford went to see Chief Marion. At this point, Chief Marion informed the plaintiff that Crutcher had reported to Alderman Henley that Relliford had been taking bribes. The plaintiff was then told that the Board of Aldermen (Board) was discussing firing him. Relliford did express some interest in going before the Board to respond to the bribery allegations. However, after subsequent conversations with Chief Marion, the plaintiff apparently determined that the best course of action was to resign "in good standing." The plaintiff then submitted his written letter of resignation on January 12, 1993 to be effective on January 31, 1993. The plaintiff applied his unused vacation time to the remainder of the month.

During this period, a reporter for The South Reporter, a local newspaper, learned of the resignation and published an article on January 21, 1993. The article, headlined as "City officer resigns" and "Relliford subject of internal investigations" read as follows:

> Willie Relliford, Holly Springs Police Department investigator, resigned amid allegations that Relliford had accepted bribes.
>
> Police [Chief] Anthony Marion said an internal investigation as well as investigations by unspecified agencies had not found any basis for the allegations.
>
> "Officer Relliford decided to resign and join his wife and family in California.
>
> "He recognized that accusations, even unfounded ones, would hurt the department," Marion said.
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> Relliford's resignation is effective January 31, 1993; however, Relliford chose to move now, applying unused vacation time . . . .

After learning of this article, the plaintiff commented that it made him look like he was guilty of something. Relliford then

decided to revoke his resignation and return to work. On February 2, 1993, before his resignation letter was accepted, Relliford returned to work. It is alleged that the plaintiff made known his intention to revoke his letter of resignation to Aldermen Deberry (not the same as the carwash owner) and Seale, Chief Marion and Mayor Smith[2]. Nevertheless, on the evening of February 2, 1993, the Board voted to accept the plaintiff's resignation.[3]

Chief Marion claims that he informed the plaintiff about the impending vote on his resignation by the Board four days prior to its action. The plaintiff disputes this notice. However, the plaintiff does admit to knowing that an appearance before the Board was an available avenue open to him. The plaintiff claims that he requested a hearing before the Board after learning of the Board's action on February 2nd.

Later, the plaintiff went to a Board meeting but did not raise the subject of his termination, contesting only the City's calculation of his compensatory time payment during his vacation.

Around this same time a second article was published by The South Reporter, on February 11, 1993. This article, based on a letter sent by Chief Marion, headlined as "Police chief says Relliford cleared of accusations," read as follows:

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[2]Mayor Smith stated that he did not consider the oral revocation of the written resignation effective and thus submitted the plaintiff's letter to the Board. Smith denies the Board was ever informed that the plaintiff revoked his resignation.

[3]For purposes of this summary judgment, the defendants' have stipulated that the plaintiff was in fact discharged by the Board on February 2, 1993.

> Willie Relliford, former investigator of the Holly Springs Police Department, has been cleared of all allegations that he accepted bribes, according to [a] letter form Police Chief Anthony Marion.
>
> . . . .
>
> The letter, written by Marion and dated Jan. 27, stated the following:
>
> "An internal investigation by the Holly Springs Police Department concerning allegations of Willie Neal Relliford taking bribes revealed that Relliford is not guilty of any wrong doing.
>
> "All allegations were unfounded. Willie N. Relliford was cleared of All Accusations," Marion said in the letter.

The plaintiff filed this action on April 13, 1993.

STANDARD FOR SUMMARY JUDGMENT

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be resolved in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an

element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986). The court here finds no factual dispute which would preclude a grant of summary judgment to the defendant.

DISCUSSION

The plaintiff's Fourteenth Amendment claim encompasses alleged violations of procedural and substantive due process. The Fourteenth Amendment prohibits a state from depriving a person of life, liberty, or property without due process of law. Here, the plaintiff alleges a deprivation of property and liberty. The plaintiff's property interest claim is based on his dismissal from the Holly Springs Police Department. The plaintiff's liberty interest claim is based on the publication of allegedly false and stigmatizing statements in the local newspaper. The court finds each ground without merit.

I. Procedural Due Process

1. Property Interest

In order to claim a constitutional deprivation of a protected interest under § 1983, a plaintiff must show he had a property right in his job which triggers the right to a due process hearing. Board of Regents v. Roth, 408 U.S. 564, 569, 33 L. Ed. 2d 548, 556 (1972). In the words of the Supreme Court, "[t]o have a property

interest in a benefit, a person clearly must have more than an abstract desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Id. at 577.

The existence of a property interest is not found in the Constitution, rather it is determined by state law. Id.; Bishop v. Wood, 426 U.S. 341, 344, 48 L. Ed. 2d 684 (1976); Johnson v. Southwest Miss. Regional Med. Ctr., 878 F.2d 856, 858-59 (5th Cir. 1989). In an action for wrongful discharge, the property interest must be based on a legitimate claim to continued employment under a source independent of the Fourteenth Amendment. McMillian v. City of Hazlehurst, 620 F.2d 484, 485 (5th Cir. 1980). The plaintiff must provide an applicable state law or a "mutually explicit understanding between employer and employee." Id.

In the instant cause, the McMillian case is directly on point. There, the Fifth Circuit applied Mississippi Code Annotated § 21-3-5 (1990) to municipal police officers,[4] thus holding that such

[4]Mississippi Code Annotated § 21-3-5 states, in pertinent part:

> From and after the expiration of the terms of office of present municipal officers, the mayor and board of alderman of all municipalities operating under this chapter shall have the power to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. . . . The terms of office or employment of all officers and employees so appointed shall expire at the expiration of the term of office of the governing authorities making the appointment, unless such officers of employees shall

employees are terminable at-will.[5] Furthermore, Mississippi common law has traditionally adhered to a strong presumption in favor of the employment at will doctrine. See Perry v. Sears, Roebuck & Co., 508 So. 2d 1086, 1088 (Miss. 1987) (Mississippi follows the common law rule that where there is no employment contract, or where there is a contract but no term is specified, the relationship may be terminated at will); Shaw v. Burchfield, 481 So. 2d 247 (Miss. 1985); Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874, 874-75 (Miss. 1981); Butler v. Smith & Tharp, 35 Miss. 457, 464 (1858). Nothing the plaintiff has cited causes this court to depart from over 135 years of precedence.

The plaintiff does however contend that the City of Holly Springs has adopted a policy of terminating its police officers only for cause by promulgating a manual that contained certain procedures in disciplining and termination officers. For this proposition, the plaintiff cites the court to Bobbitt v. The Orchard, Ltd., 603 So. 2d 356 (Miss. 1992). While it is true that employment handbooks that set forth procedures to be followed in the event of infraction of its rules can become part of an employment contract, the failure to follow those procedures does

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have been sooner discharged as herein provided.

[5]The plaintiff argues to the court that the Fifth Circuit erroneously applied this section to municipal police officers. However, this court is bound by the decision of the Court of Appeals and furthermore finds no authority to depart from the McMillian case or the many cases that support its analysis. The court also points out that Mississippi legislature has not seen fit to alter this section of the Code in the fifteen years since the opinion has been published.

not necessarily rise to the level of a deprivation of constitutional due process. See Conley v. Board of Trustees of Grenada County Hosp., 707 F.2d 175, 181 (5th Cir. 1983) (explaining that the police department ordinances in McMillian were not explicit enough concerning conduct and disciplinary procedures to override Miss. Code Ann. § 21-3-5 and could not therefore create a property interest). In order to create a property interest the handbook must provide the plaintiff with a legitimate claim of entitlement to continued employment. Procedural guidelines alone do not create such an interest. See Christian v. McKaskle, 649 F. Supp. 1475, 1478-79 (S.D. Tex. 1986) ("even if plaintiff had certain procedural rights, such as a right to a hearing, plaintiff might still be an at-will employee" and thus not entitled to constitutional due process); Bishop, 426 U.S. at 345 (holding that a city ordinance is subject to two possible interpretations: conferring guaranteed employment, or merely conditioning employee's removal on compliance with certain specified procedures).

The court finds that the manual in the instant cause does not confer a legitimate claim of entitlement in continued employment. The manual itself is not an exclusive listing of disciplinary rules. "Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders or directives of the department." Manual at 13. The plaintiff relies on certain language in the manual that allegedly mandates suspension with pay and a hearing before an employee can be dismissed. The plaintiff's reliance on this as creating a

property interest is misplaced. As an at-will employee, the plaintiff has no legitimate claim to a property interest. Christian, 649 F. Supp. at 1477 (citing Thompson v. Bass, 616 F.2d 1259, 1265 (5th Cir. 1980), cert. denied sub non., Thompson v. Turner, 449 U.S. 983 (1980)). Indeed, the very case cited by the plaintiff serves to bolster this analysis. The Bobbitt court held that while the provisions of a handbook may be implied into the employment contract, it does not "give the employees 'tenure,' or create a right to employment for any definite length of time . . . ." Bobbitt, 603 So. 2d at 361. Failure to follow these procedures in discharging the plaintiff may implicate state law but would not create a property interest.

2. Liberty Interest

To be sure, discharge from public employment under circumstances that put the employee's reputation, honor or integrity at stake gives rise to a procedural opportunity to clear one's name under the Fourteenth Amendment's protection of liberty interests. Roth, 408 U.S. at 573; Rosenstein v. City of Dallas, Tex., 876 F.2d 392 (5th Cir. 1989), reinstated in part by, 901 F.2d 61, cert. denied, 498 U.S. 855 (1990). In order to maintain such an action for a deprivation of a liberty interest embodied in a denial of a name-clearing hearing, the employee must prove the following: that he is a public employee, that he was discharged, that stigmatizing charges were made against him in connection with his discharge, that the charges were false, that the charges were made public, that he requested a name-clearing hearing, and that

the request was denied. Id. at 395-96; Arrington v. County of Dallas, 970 F.2d 1441, 1447 (5th Cir. 1992).

The defendants admit for purposes of this summary judgment that the plaintiff was a public employee and that he was discharged. Furthermore, there appears to be a dispute as to whether the plaintiff requested a hearing and whether one was denied by the Board as well as a waiver issue. These issues create genuine issues of fact and are not appropriate for the Rule 56 discussion here. However, the crux of the plaintiff's liberty interest claim is the stigmatization and falsity elements. Here, the court finds no genuine issue of material fact.

To be stigmatizing, published statements "must seriously damage his association in the community" such that the plaintiff's "good name, reputation, honor, or integrity is at stake." Roth, 408 U.S. at 573. A stigmatizing statement must allege dishonesty, stealing or some other allegation that gives rise to a "badge of infamy," public scorn, or the like. See Wells v. Hico Indep. Sch. Dist., 736 F.2d 243, 256 n.16 (5th Cir. 1984), cert. dismissed, 473 U.S. 901 (1985). The plaintiff's liberty interest claim is essentially grounded on three statements published in The South Reporter, on January 21, 1993. They are: (1) that the plaintiff resigned amid allegations that he accepted bribes, (2) the statement concerning an "internal investigation" and "investigations by unspecified agencies," and (3) that the plaintiff "chose to move now" to join his wife and family in California. Additionally, the plaintiff claims that an omission

from the February 11, 1993 article that he revoked his resignation and had gone back to work was an intentionally misleading statement, inferring that the plaintiff had simply resigned and gone away.

First, the plaintiff admits that he resigned amidst allegations of bribery. Thus, this cannot as a matter of law support the deprivation of a liberty interest claim. Codd v. Velger, 429 U.S. 624, 628, 51 L. Ed. 2d 92 (1977) (only when then defendant creates and disseminates a false and defamatory impression in connection with employee's termination is a right to a hearing invoked); Rosenstein, 876 F.2d at 396 (same).

Second, the plaintiff contends that the mere mention of "investigations" lends credence to the bribery allegations and thus stigmatizes him. This argument is without merit. Those investigations, whether they occurred or not, discovered no basis for the allegations. The plaintiff has failed to show how an investigation that clears an employee of any wrongdoing can amount to a stigma. In Hall v. Ford, 856 F.2d 255, 257 (D.C. Cir. 1988), an Athletic Director was terminated shortly after a memorandum was circulated suggesting that he was fired for misconduct. The court, in holding that due process was not violated, stated that the termination letter by the president removed any possibility that he was stigmatized by his dismissal. Id. at 267. That letter provided, in pertinent part, that the "decision to terminate [the plaintiff] does not reflect unfavorably on your performance as Athletic Director . . . [and] the University is most grateful for

your work in solidifying the management controls in the Department." Id. Because of the name-clearing nature of the letter, the court felt that "nothing further would be gained from a name-clearing hearing." Id.; see also Kelleher v. Flawn, 761 F.2d 1079, 1087 (5th Cir. 1985) (even if court finds a deprivation of liberty interest, the only process due is a hearing to clear one's name).

Similarly, the defendants have removed any possibility that the published statements could cause a deprivation of the plaintiff's liberty interest. Clearly, the second article serves such a purpose. That article, quoting Chief Marion, stated that the plaintiff was "not guilty of any wrong doing" and "was cleared of All Accusations." Indeed, nothing further would be gained from a name-clearing hearing.

Lastly, the plaintiff is left with the argument that the statement concerning his alleged move to California created an impression that the plaintiff was fleeing Holly Springs. The court finds no validity in this argument. The statement is not a "charge" or "reason for dismissal" that would seriously damage his association in the community and thus, without more, this statement is not stigmatizing in the constitutional sense. See Roth, 408 U.S. at 573; Bishop, 426 U.S. at 347-49; Rosenstein, 876 F.2d at 395-86; Russillo v. Scarborough, 727 F. Supp. 1402, 1411-12 (D.N.M. 1989), aff'd, 935 F.2d 1167 (10th Cir. 1991); cf. Melton v. City of Oklahoma City, 928 F.2d 920, 930 (10th Cir.) (charge must be the basis of punitive action taken by a public entity against an

employee), cert. denied, 502 U.S. 906 (1991). Likewise, the plaintiff's contention that the omission from the second article of his revocation and return to work as intentionally misleading is without merit and does not warrant further discussion.

II. Substantive Due Process

In addition to his procedural due process claims, the plaintiff has alleged that as a result of the defendants actions, he has been deprived of substantive due process. To maintain a cause of action for violation of substantive due process, a plaintiff must show the existence of a protected property or liberty interest, and arbitrary or capricious deprivation of that interest. Honore v. Douglas, 833 F.2d 565, 568 (5th Cir. 1987). Having concluded that the plaintiff has no constitutionally protected property or liberty interest, it follows that his substantive due process claim must necessarily fail.

STATE LAW CLAIMS

The court, finding no remaining federal claims, will dismiss the pendent state claims. United Mine Workers v. Gibbs, 383 U.S. 715, 16 L. Ed. 2d 218 (1966); see also Wong v. Stripling, 881 F.2d 200, 204 (5th Cir. 1989) ("[o]rdinarily, when the federal claims are dismissed before trial, the pendent state claims should be dismissed as well").

CONCLUSION

The plaintiff has failed to meet his burden of showing either a property right or a liberty interest in his job or in the

termination of his job, and therefore summary judgment will be granted as to all defendants on all counts.

THIS, the _____ day of August, 1995.

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NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE